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U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

APR 11 2005

FILE: [redacted] Office: HARLINGEN, TEXAS Date:

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship pursuant to Section 301 of the former Immigration and Nationality Act; 8 U.S.C. § 1401.

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Harlingen, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on March 30, 1965, in Monterrey, Nuevo Leon, Mexico. The applicant's moth[redacted] was born in Mexico on July 23, 1939. She derived U.S. citizenship at birth through a U.S. citizen parent. The applicant's father, [redacted] was born in Mexico on August 31, 1940. He also derived U.S. citizenship at birth through a U.S. citizen parent.[1] The applicant's parents were married on November 13, 1960, in Mexico. The applicant seeks a certificate of citizenship pursuant to section 301(c) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1401(c), based on the claim that she acquired U.S. citizenship at birth through her parents.

The district director found that the applicant had failed to establish that either of her parents resided in the United States prior to the applicant's birth. The application was denied accordingly.

On appeal, counsel asserts that the evidence contained in the record is consistent and that it establishes by a preponderance of the evidence that the applicant's mother [redacted] esided in the United States prior to the applicant's birth.

Section 301(c) of the Act provides, in pertinent part, that a child is a citizen of the United States at birth, if the child is:

> [A] person born outside of the United States and its outlying possessions of parents both of whom are citizens of the United States and one of whom has had a residence in the United States or one of its outlying possessions, prior to the birth of such person.

Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33), states that, "[t]he term "residence" means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent." The Board of Immigration Appeals additionally clarified in, *Matter of Jalil,* 19 I&N Dec. 679 (BIA 1988), that, the maintenance of financial interests, the retention of a house, or the intention to return does not establish a person's "dwelling place in fact" for purposes of section 101(a)(33) of the Act.

The AAO notes that the record contains no evidence to establish that the applicant's father resided in the U.S. at any time prior to the applicant's birth. Moreover, the AAO notes that the Form N-600, Application for Certificate of Citizenship (N-600 application) filed by the applicant indicates that the applicant's father began residing in the U.S. in 1991, well after the applicant's birth.

The record contains the following evidence pertaining to [redacted] residence in the United States prior to the applicant's birth:

> A notarized affidavit dated July 13, 1995, written by [redacted] stating that she resided with her sister [redacted] in McAllen, Texas from November 18, 1963 to April 6, 1964.
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> A notarized affidavit dated July 19, 1995, written by Manuela Silva Frausto, stating that

[1] *See* U.S. Certificate of Citizenship documents contained in the record.

her sister, [redacted] lived in the United States in 1953. The affidavit states further that [redacted] met her husband [redacted] house in 1960, and that [redacted] lived with her husband at [redacted] house between April 1964 and 1990.

A notarized affidavit dated June 10, 1995, written by [redacted] stating that she began living in the U.S. in 1953, and that her sister [redacted] visited her in the U.S. every year after 1953. The affidavit states that [redacted] met her husband at [redacted] house in 1960, and that after 1960, [redacted] continued to visit her often during holidays.

8 C.F.R. § 103.2(b)(2) states, in pertinent part:

> (2) *Submitting secondary evidence and affidavits* – (i) *General.* The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petitions who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.
>
> (ii) *Demonstrating that a record is not available.* Where a record does not exist, the applicant or petitioner must submit an original written statement on government letterhead establishing this from the relevant government or other authority. The statement must indicate the reason the record does not exist, and indicate whether similar records for the time and place are available.

The present record contains no primary or secondary evidence regarding [redacted] residence in the United States, and the AAO finds that the applicant has failed to provide evidence demonstrating that she attempted to locate evidence of her mother's residence in the United States prior to her birth. The AAO finds further that the affidavits submitted on appeal do not address or overcome the unavailability of primary and secondary evidence relating to [redacted] residence in the U.S. prior to the applicant's birth. Accordingly, the AAO finds that the applicant has failed to overcome the presumption of ineligibility as set forth in 8 C.F.R. § 103.2(b)(2).

Moreover, the AAO notes that the affidavits written by the applicant's mother, and by her sister [redacted] lack probative value because they contain no supporting evidence or information to substantiate their residence claims and because they lack basic and material detail regarding the dates tha[redacted] resided in the United States and the addresses at which she resided.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has not met her burden. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.